

United States District Court
Southern District of Texas
ENTERED

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

DEC 20 2004

Michael N. Milby, Clerk of Court
By Deputy Clerk 

LUIS ALEJANDRO GARZA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

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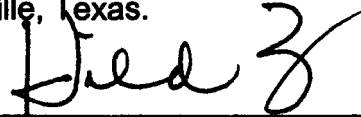
CIVIL NO. B-02-154

ORDER

BE IT REMEMBERED that on December 17, 2004, the Court **GRANTED IN PART AND DENIED IN PART** Plaintiff's First Amended Motion to Proceed in Forma Pauperis and Request for Items to be Included in the Record on Appeal [Dkt. No. 44]. The Court finds Plaintiff has sufficiently demonstrated his indigent status for the purpose of appeal. See Pl's Motion, Ex. A (Declaration for Leave to Proceed in Forma Pauperis). To the extent that Plaintiff's request that transcripts of two hearings conducted by the Magistrate Judge on January 16, 2003, and January 15, 2004, be included in the record on appeal is a request for these transcripts to be provided at government expense, the Court **DENIES without prejudice** this request. Pursuant to 28 U.S.C. § 753(f), transcripts may be provided at government expense if the trial or circuit judge "certifies that the appeal is not frivolous (but presents a substantial question)." In order to succeed on a motion for production of transcripts at government expense, therefore, Plaintiff must also show why the transcripts are necessary for proper disposition of his appeal. See *Norton v. Dimanza*, 122 F.3d 286, 293 (5th Cir. 1997) (citing *Harvey v. Andrist*, 754 F.2d 569, 571 (5th Cir.), cert. denied, 471 U.S. 1126, 105 S.Ct. 2659, 86 L.Ed.2d 276 (1985)). Other than presenting his financial declarations to proceed in forma pauperis, Plaintiff has failed to make any showing of the necessity of the hearing transcripts.

Thus, to the extent Plaintiff requests these transcripts at government expense, the Court **DENIES without prejudice** this request. The Court **GRANTS** Plaintiff's First Amended Motion to Proceed in Forma Pauperis in all other respects [Dkt. No. 44]. Plaintiff's original Motion to Proceed in Forma Pauperis is now **MOOT** [Dkt. No. 43].

DONE this 17th day of December, 2004 at Brownsville, Texas.

A handwritten signature in black ink, appearing to read 'Hilda G. Tagle', written over a horizontal line.

Hilda G. Tagle
United States District Judge